



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

September 30, 2016

Mr. Peter Swenson, Chief
Watersheds and Wetlands Branch
U.S. EPA Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

Dear Mr. Swenson:

I am writing in response to your August 29, 2016 comments on Ohio's draft 2016 Integrated Report, including our CWA Section 303(d) list of impaired waters. Responses will follow the same order as your comments.

Lake Erie/Nutrients/HABs

In your letter you note that Ohio is responsible for assessing and listing all waters in our jurisdiction, including the State's open waters of Lake Erie, and EPA's role is to review and either approve or disapprove our list of impaired waters. You also state that Ohio needs to assess all of our waters in Lake Erie against all applicable water quality standards, in particular our narrative standard for nutrients and algae. Additionally, you state that Ohio should assemble and evaluate information such as algal coverage, impacts to recreation, impacts to industry, businesses, aquatic life, etc.

Nutrients and algae in Lake Erie are multi-jurisdictional and bi-national issues. It is our firm and consistent position that while we are making significant investments in Ohio waters and watersheds to combat this issue locally, all states and countries surrounding and contributing to problems in Lake Erie should, with leadership from our national EPA, develop a coordinated response.

In my opinion, this is best addressed through a formalized partnership with all the parties involved, and should be handled in a consistent, uniform manner, starting with the assessment and listing process. This reality was recognized in a letter dated November 17, 2015 to the National Wildlife Federation and Clear Water 2 and in press statements announcing the approval of Ohio's 2014, 303(d) list, where US EPA acknowledged that protecting the open waters of Lake Erie is a shared responsibility among the United States, Great Lake states and Ontario.

Part of that shared responsibility starts within CWA section 118(c)(2)(A) that requires USEPA, by 1991, to specify numerical limits on pollutants in ambient Great Lakes waters to protect human health,

aquatic life and wildlife and shall provide guidance to the Great Lakes States on minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System.

Unfortunately, even though well past expectations of congress, USEPA has not proposed a nutrient water quality standard for the waters of Lake Erie. In addition, the International Joint Commission (IJC) has authority to develop recommendations for water quality improvements if requested by USEPA or Environment Canada. I am not aware of any such request of your agency to the IJC, or if so, any resultant recommendations from them.

In the absence of uniform standards that would apply to the open waters of Lake Erie, requiring Ohio to unilaterally develop assessment methods is absurd. This absurdity is compounded when there is no clear process or standard to de-list. Single state assessment and impairment designations are complicated and of questionable value in that the algae is seasonal, transient, spatially and temporally unpredictable, and variable in species make-up, toxicity and bio-accumulation. These issues and others call for an assessment methodology that is devoid of state boundaries and looks at Lake Erie for what it is, one ecological system in which the water flows regardless of state or national borders.

In the 2014 IR, Ohio did provide a planned approach for assessing impairment in the open waters. However, that plan was based on the expectation that the Great Lakes Water Quality Agreement Annex 4 task team would develop concentration thresholds for nutrients, chlorophyll-a or a related parameter which could be used to assess the open lake attainment of our narrative water quality standard - and that did not happen. Instead, the recommendations are to focus on reducing loads from the tributaries, which is where our focus has been and will continue to be.

If the impairment issue was of importance to the jurisdictions and USEPA, then it should have been part of the Annex 4 deliberations – it was not. A lake TMDL was not even discussed as part of the Annex 4 process. The Annex 4 is focused on load reduction, to be addressed through individual state and province Domestic Action Plans. Ohio has, along with Michigan have gone even further than the expectations of Annex 4 by developing our own Collaborative Agreement to meet these international goals and to start far sooner than even Annex 4 is demanding of other states.

To help with consistency, clarity and to provide a path forward that would benefit us all, Ohio suggests the following;

1. USEPA should finalize the recreation standard for algal toxins (microcystin), or at a minimum a threshold that could be used to consistently interpret narrative water quality standards. Once that level is established, it would provide Ohio and other states with at least one common parameter and value to use for assessing and listing the open waters for harmful algal blooms.
2. Ohio in collaboration with USEPA will explore one of the existing processes (GLNPO or IJC) to facilitate a multi-state and Ontario discussion on establishing standards and methods to assess aquatic life use and other standards for use in assessing impairments in Lake Erie.

3. USEPA should recognize and validate that any efforts which will ultimately remove the nutrient impairment from the shoreline and algae toxin impairment from the drinking water in-takes will most likely address water quality issues resulting from excessive nutrients and algae in the open-waters. We are committed to addressing those impairments through Annex 4.
4. USEPA should develop de-listing criteria.

Ohio is not opposed to making impairment designations, evidenced by those already done in Lake Erie, but only when a science based process for designation and de-listing is available. We simply do not believe that the tools and measures are available yet to do so in a manner that is consistent, defensible and appropriate, beyond the shoreline and drinking water in-takes and we will not discuss or propose further listings until there are scientific tools, not political pressure, driving this debate.

Ohio River and ORSANCO

In your letter you stated that Ohio should use ORSANCO data to assess and list the Ohio River. While we acknowledge that the language needs updated since ORSANCO's 2016 report is now available, we respectfully disagree with your request to do our own assessment for the following reasons:

1. We have included the same language related to the Ohio River and ORSANCO in at least our last two Integrated Reports and they were approved by USEPA (see section D of Ohio's 2012 and 2014 Integrated Reports). In fact, the language in those reports was included in the approval documents. It is our understanding that at least one other Region 5 state, Illinois, also defers to ORSANCO in listing the Ohio River as impaired.
2. Ohio's large river assessment procedures were not developed for a river like the Ohio. Of even more importance, biological criteria in the Ohio Water Quality Standards (Table 7-15 in OAC [3745-1-07](#)) recognize this difference and clearly and specifically state that "these criteria do not apply to the Ohio river, lakes or Lake Erie river mouths". Those criteria are what we use to assess our waters for aquatic life use attainment.
3. Ohio EPA and U.S. EPA have both participated on ORSANCO's Technical Committee and the Biological and Water Quality Subcommittee and have had staff actively involved with the development of the monitoring and assessment procedures. The current suite of ORSANCO's procedures, including the definition of Ohio River assessment units and the biological criteria thresholds set to ascertain status of the Ohio River aquatic life use, have been fully vetted and approved by the Technical Committee. Water quality criteria adopted by ORSANCO are approved by the Commission, which Ohio EPA also serves on. As Ohio EPA has a similar aquatic life use assessment philosophy as ORSANCO and has a level of comfort with ORSANCO staff capabilities to assess the Ohio River aquatic life use, Ohio EPA, for the last several Integrated Report assessment cycles, has accepted their determination of assessment unit status and condition and incorporated these into Ohio's Integrated Water Quality Monitoring and Assessment reports.

Minor Corrections

Thank you for pointing out these edits. We will make those changes before submitting the final report in a couple of weeks along with our response to comments from the public.

Please contact Cathy Alexander (614-644-2021) of the Division of Surface Water if you need additional information.

Sincerely,



Tiffani Kavalec, Chief
Division of Surface Water
Ohio EPA

cc: Chris Korleski, Director, Water Division, U.S. EPA Region 5